

Internal Revenue Service  
**memorandum**

CC:TL:Br3  
CLRobertson

TL-N-650-90  
CC:TL:Br3 Robertson Hall  
I.R.C. Section 4975  
Rule 155 Computation

date: NOV 9 1989

to: District Counsel, Los Angeles CC:LA  
Attn: James Yan, Esq.

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: [REDACTED]

This refers to your request for assistance on the Rule 155 computation in the above case. The computations involved determining the correct amount of I.R.C. §§ 4975(a) and 4975(b) tax deficiencies based on the court's opinion in [REDACTED]. This confirms the information previously telefaxed to your office.

We have prepared the computations showing our methodology, and a summary of the excise tax deficiencies in this case. There are calculations and a summary giving the [REDACTED] loan prohibited transactions involved in this case. As you will note, our recomputations resulted in slightly higher taxes for each subsection than as reflected in the brief. We believe that these differences are attributable to minor items such as how many days of the initial month of each loan were considered. We do not consider these amounts significant and defer to your office on whether to adjust the figures for the Rule 155.

We have also considered the materials you forwarded subsequently from petitioner's counsel which pertain to abatement of second tier taxes under I.R.C. § 4961. We are sympathetic to opposing counsel's desire to eliminate if possible the bulky section 4961 procedures by handling the issue in the Rule 155 context. However, as discussed between Calder Robertson of this office and James Yan of your office on October 23, 1989, the computations of the section 4975(a) and section 4975(b) taxes should enable you to prepare and stipulate to a decision document based solely on the court's opinion. As requested by James Yan of your office, we determined through the Assistant Commissioner (Employee Plans and Exempt Organizations) here in the national office that the Los Angeles District Director would prefer that your office handle the issue of correction in this case as part of the stipulated decision document. Therefore, should your office, after any appropriate consultation with the district, decide to handle the correction issue as part of the Rule 155, you will need to obtain definite proof that full correction has occurred. We suggest that the taxpayer start with the regulatory explanation in Treas. Reg. § 1.4941(e)-1, which requires the undoing of the transaction (repayment of the principal) plus

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additional payments to reflect interest, as measured in the regulation.

We believe the taxpayer should first present a specific proposal or set of actions to achieve correction of the prohibited transactions involved in this case. At that point, we would be glad to assist in determining whether those actions constitute correction. The district may also be consulted on this point. Of course, if the correction issue is to be handled in the Rule 155 context, full correction must be completed before the stipulation can be signed.

Please contact Calder Robertson at (FTS) 566-3407 should you have any questions.

MARLENE GROSS

By:

  
SARAH A. HALL  
Employee Plans Litigation  
Counsel  
Tax Litigation Division

Attachments:

4975(a) & (b) computations